

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SARAH J. PRICE

Claimant

VS.

CITY OF OLATHE

Self-Insured Respondent

Docket No. 5,015,269

ORDER

Respondent requested review of the February 21, 2007, post award medical Order entered by Administrative Law Judge Steven J. Howard. The Board placed this matter on its summary docket for a determination without oral argument.¹

APPEARANCES

Sarah J. Price, of Shawnee, Kansas, appeared pro se. Timothy C. Gaarder, of Kansas City, Kansas, appeared for the self-insured respondent.

ISSUES

The Administrative Law Judge (ALJ) found that claimant's current condition is a direct and natural result of her February 20, 2004, occupational injury. Accordingly, the ALJ sustained claimant's Application for Post Award Medical and authorized Dr. John B. Moore, IV, to treat her and to perform surgery, if necessary.

Respondent argues that claimant's current need for treatment relates to her current employment and does not arise out of and in course of her employment with respondent. Respondent also contends the ALJ exceeded his authority and/or jurisdiction in awarding claimant benefits because no terminal dates were set and respondent was given no opportunity to present evidence in the form of Dr. Moore's deposition. In the event the Board find's that claimant's condition arose out of and in the course of her employment with

¹ For purposes of K.S.A. 44-551(b)(1), March 23, 2007, the day following the date the last brief was due, is the date arguments were presented to the Board.

respondent, respondent requests that the Board remand the matter to allow the parties to take the deposition testimony of Dr. Moore.

Claimant contends that her need for further medical treatment is a direct result of the injury incurred while she was employed at respondent. She argues that her statements and the evidence submitted at the post-award medical hearing speak for themselves and that it is not necessary to take deposition testimony from Dr. Moore. Claimant requests the ALJ's post-award medical Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

Claimant suffered a series of cumulative trauma accidents and injuries while working for respondent. For purposes of settlement, the date of accident was agreed to be February 20, 2004. Treatment was provided to claimant, which eventually included right carpal tunnel release, right cubital tunnel release, right long trigger finger release, left cubital tunnel release, and left long trigger finger release. After her surgeries, claimant developed reflex sympathetic dystrophy in her left hand. According to a letter from Dr. Moore to respondent dated April 22, 2005, claimant had reached maximum medical improvement and was released from his care with no permanent restrictions. Dr. Moore mentioned in that letter that he had last seen claimant on March 29, 2005, at which time she complained of a "squeaking sensation" in her long finger flexor tendon with active motion. Dr. Moore injected her with a long-acting steroid to reduce any tenosynovitis in that tendon sheath.

Claimant settled her workers compensation claim on August 18, 2005, based on a 12 percent permanent partial disability to the body as a whole. She retained the right to seek future medical treatment and the right to review and modification. Claimant testified she left open the issue of future medical because Dr. Moore had told her she may need additional steroid injections or possible surgery on her left middle finger.

Claimant ended her employment with respondent the first part of July 2005 and took another job with the City of Merriam on July 11, 2005, doing basically the same type of work she performed for respondent.

Claimant testified she never stopped having problems with her finger. She did not seek treatment again until November 11, 2005, because Dr. Moore had told her she could not get another injection until then and because she had just started her job with the City of Merriam and did not have any sick leave accrued. Dr. Moore's notes of that date indicate she complained of "[left] middle finger constant throbbing - unable to use - nerve

blocks helped - swelling - 2 weeks.”² Claimant testified, however, that the symptoms did not start then but had been ongoing and had gotten worse two weeks earlier. Dr. Moore’s notes of that date further indicate that claimant “is having continued chronic problems with her left long finger flexor tendon. She has recurrent tenosynovitis in the long finger flexor tendons and this has recurred in spite of steroid injection.”³ Dr. Moore recommended surgery.

Claimant said that on November 11, 2005, when she “presented him [with] the situation with [her] finger,” Dr. Moore said, “I was thinking that this might happen. I think we’re just going to have to do the additional surgery to correct this.”⁴

Claimant requested authorization for the recommended surgery from respondent. When respondent asked Dr. Moore to give an opinion concerning causation of claimant’s current problems, in a letter dated January 27, 2006, Dr. Moore replied:

According to my chart [claimant] reports the onset of left middle finger throbbing and swelling for two weeks prior to seeing me on 11/11/05 and that puts the onset of symptoms, therefore, in mid 10/05 and would, therefore, put the causation for her left long finger problems at whoever was the employer at that time.⁵

Accordingly, respondent denied claimant’s request for authorization of treatment. Respondent suggested that claimant file a new claim with her current employer. Claimant then requested benefits through the City of Merriam. The City of Merriam denied her request for benefits based on a letter from Dr. Moore dated August 11, 2006, in which Dr. Moore wrote:

In my medical opinion it is possible that [claimant] was not at maximum medical improvement for trigger finger and injection only masked her symptoms for the time frame in which it was working.⁶

After being denied benefits from the City of Merriam, claimant requested a hearing on her request for post-award medical previously filed in this matter. The ALJ agreed that claimant’s condition was a direct and natural result of her February 20, 2004, occupational injury and authorized treatment by Dr. Moore.

² Post-Award Medical Hearing Trans., Resp. Ex. A at 2.

³ *Id.*, Resp. Ex. A at 2

⁴ *Id.* at 13.

⁵ *Id.* at 1.

⁶ *Id.*, Cl. Ex. 1.

Respondent argues that the ALJ exceeded his authority and/or jurisdiction in awarding claimant benefits because the post-award medical hearing was not conducted pursuant to Kansas statutes. K.S.A. 2006 Supp. 44-510k(a) provides in part:

At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto.

Respondent argues that in the present case, no terminal dates were set and no opportunity was given to either party to present deposition evidence by Dr. Moore. Respondent contends that whether claimant's need for medical treatment to her left long finger is a direct and natural consequence of her original injury is disputed and that the deposition of Dr. Moore would be beneficial in the determination of that issue. Claimant asserts that the deposition of Dr. Moore is not necessary for the determination of this issue. Moreover, respondent did not advise the ALJ that it wanted to take the deposition of Dr. Moore. At the end of the post-award medical hearing, respondent's attorney stated:

I believe there's some procedural objections as well because we are—I'm not sure that we had any of the prior statutory meetings on a post award issue. But with that, you know, we still, of course, have our foundation issues as well, Judge.⁷

THE COURT: Anything else before we close?

THE CLAIMANT: No, sir.

THE COURT: I'll issue an order after I review all of this. Thank you folks.⁸

The hearing then concluded.

⁷ All exhibits were admitted without objection, so there is nothing in the record to show what foundation issues counsel for respondent was referring to.

⁸ *Id.* at 16.

The Board finds respondent's argument that the ALJ exceeded his jurisdiction and/or authority to be without merit. Respondent did not request that terminal dates be set. Respondent gave the ALJ no indication that it wanted the record left open for a period of time after the hearing to present additional evidence. To the contrary, when the ALJ advised the parties that he would be issuing an order after he reviewed the exhibits offered at the hearing, respondent acquiesced by its silence. It is disingenuous for respondent to now argue that the ALJ exceeded his authority in issuing his order because "[n]o opportunity was given to the Respondent to present the evidence of Dr. Moore's deposition."⁹

Turning now to the issue of causation, the Board finds claimant has proven that her present symptoms and need for medical treatment are a direct and natural consequence of her February 20, 2004, accident with respondent. Claimant was never symptom free following that injury, and she was continuing to experience symptoms when she left her job with respondent and went to work for the City of Merriam. Respondent has not proven that claimant suffered a subsequent intervening injury.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*,¹⁰ the court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Steven J. Howard dated February 21, 2007, is affirmed.

IT IS SO ORDERED.

⁹ Appeals Board Brief of Appellant/Respondent City of Olathe (filed March 13, 2007) at 7.

¹⁰ *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972); see also *Logsdon v. Boeing Co.*, 35 Kan. App. 2d 79, 128 P.3d 430 (2006).

Dated this _____ day of April, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Sarah J. Price, 6111 Long St., Shawnee, Kansas, 66216, pro se claimant
Timothy C. Gaarder, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge